IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 708 of 1990

For Approval and Signature:

***HON'BLE* MISS JUSTICE R.M.DOSHIT**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

==========

BHOR INDUSTRIEDS LTD - Applicant(s)

Versus

SPECTUM ENGINEERING PVT. LTD & 1 - Opponent(s)

==========

Appearance :

MR NILESH A PANDYA for Petitioner

NOTICE SERVED for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2.

==========

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 18/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 16th February, 1990 passed by the learned Joint District Judge, Baroda in Regular Civil Appeal No. 314 of 1982, the respondent no.1, plaintiff in Rent Suit No. 506 of 1978, has preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House

Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**'}.

The petitioner-plaintiff is a Public Limited Company having its registered office at Mumbai. The Company owns lands, Survey Nos. 556, 561/1, 561/2 and 565, admeasuring 72709 sq.ft., situated at Jambuva, Taluka & District Baroda. Under the lease deed dated 16th February, 1973 [**Exh. 38**], the said lands alongwith construction, factory building, sanitary block, shed and lunch room [hereinafter referred to as, "**the demised premises**"] were leased to one Kril Standard Products Private Limited. The said Kril Standard Products Private Limited was merged into Art Leather Limited, a Public Limited Company, having its registered office at Mumbai, the defendant no.1. The plaintiff instituted Rent Suit No. 506 of 1978 in the court of Small Causes, Baroda for recovery of possession of the demised premises on the ground that the tenant, the defendant no.1, had unlawfully sublet the demised premises to the defendant no.2, a private limited company. The defendant no. 1 did not appear before the Court nor did it contest the Suit. The suit was proceeded against the defendant no. 1 *ex parte*. The defendant no. 2 filed its written statement Exh. 16 and contested the suit. The defendant no. 2 admitted that the defendant no. 1 had sublet the demised premises to the defendant no.2. It was,

however, contended that the interest in the demised premises was transferred to the defendant no. 2 with the knowledge and consent of the plaintiff-landlord. The defendant no. 2 had thus become direct tenant of the plaintiff. In the alternative, it was contended that under the lease deed, the defendant no. 1 was authorized to sublet or transfer the suit premises or the interest therein. The defendant no. 2 was, therefore, a lawful subtenant in the demised premises.

The learned trial Judge, by judgment and order dated 17th September, 1982, held that the defendant no. 2 was an unlawful subtenant in the demised premises and passed decree for possession in favour of the plaintiff. Feeling aggrieved, the defendant no.2 preferred Regular Civil Appeal No. 314 of 1982 in the Court of learned District Judge, Baroda. The learned Joint District Judge, Baroda, by *impugned* judgement and order, allowed the Appeal and set-aside the decree for possession passed by the trial Court. The lower appellate Court was of the opinion that under the lease-deed Exh.38, the defendant no.1 had a right to transfer its interest in the demised premises. The defendant no. 2 was, therefore, a lawful sub-tenant in the demised premises.

As the defendant no. 2 had admitted that it was a

sub-tenant in the suit premises, the question that required consideration was whether the defendant no. 2 was inducted as sub-tenant with the knowledge and the consent of the plaintiff and, *in the alternative*, whether the defendant no. 2 was a lawful sub-tenant as alleged. As to the knowledge and consent of the plaintiff, both the Courts below have recorded finding in favour of the plaintiff. The said finding does not call for interference.

The relevant covenant of the lease-deed provided that the structures “A” & “B” in the suit premises shall be used as factory, godown and office, and the structure “C” shall be used as lunch room and for no other purpose. It specifically provided that the lessee shall not sublet, re-let, assign or part with the possession of the “demised premises” or any part thereof in any manner to any person, firm, company or corporation. *Thus*, there was a specific covenant prohibiting subletting, transfer or assignment of the demised premises. The lower appellate Court, however, appears to have relied upon the covenant which permitted such transfer or assignment by way of security for the purpose of raising loan or financial assistance. The said covenant provided that, “....**Lessees shall at all times and from time to time be at liberty to (a) assign or part with its interest in or the benefit of this Indenture of**

Lease or any part thereof, (b) or part with the possession of the "demised premises" or any part or parts thereof in any lawful manner for the purpose of creating a security in favour of any party from whom any loan or financial assistance of any kind is or may be obtained by the Lessees." In my opinion, the lower appellate Court has clearly erred in relying upon the aforesaid covenant. Under the above referred covenant, the defendant no. 1 was permitted to transfer the suit premises with a view to creating a security in favour of any party from whom loan or financial assistance was obtained. In the present case, it was never the case of the defendant no. 2 that the suit premises was sublet or transferred to the defendant no. 2 by way of security for the financial assistance rendered to the defendant no.1. Thus, the finding recorded by the lower appellate Court that the defendant no. 2 was a lawful subtenant on the premise that it had rendered financial assistance to the defendant no. 1 and that the possession of and the interest in the demised premises was transferred to the defendant no. 2 by way of security is not supported by the pleadings or the evidence on record. The trial Court had rightly held that the defendant no. 2 was an unlawful sub-tenant in the suit premises and had rightly passed decree for possession against the defendants.

In view of the above discussion, the Revision Application is allowed with cost. The *impugned* judgement and order dated 16th February, 1990 passed by the learned Joint District Judge, Baroda in Regular Civil Appeal No. 314 of 1982 is *quashed* and set-aside. The judgment and decree dated 17th September, 1982 passed by the learned Addl. Judge, Small Causes Court, Baroda in Rent Suit No. 506 of 1978 is restored. Rule is made absolute.

{Miss R.M Doshit, J.}

*Prakash**